



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 24, 2003

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2003-2741

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180049.

The Texas Youth Commission (the "commission") received a request for copies of all mistreatment investigations brought against the requestor. You have identified investigative files 03-0057, 03-0441, and 03-0732 as responsive to the request. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, investigative files 03-0057 and 03-0441 are completed investigations made of, for, or by the commission. Therefore, the commission must release those investigative files under section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. You do not seek to withhold the submitted information under section 552.108. You do claim, however, that investigative files 03-0441 and 03-0732 are confidential by law under section 552.101 of the Government Code in conjunction with

section 261.201 of the Family Code, and that information within investigative file 03-0057 is confidential under section 552.101 in conjunction with the common-law right to privacy. We will therefore address your arguments under section 552.101 of the Government Code.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. Section 261.201 of the Family Code provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). We find that the submitted investigative files 03-0441 and 03-0732 consist of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. We note that the commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See* Fam. Code § 261.409 (commission by rule shall adopt standards for investigation under Fam. Code § 261.401); 37 T.A.C. § 93.33. You do not inform us, nor does it otherwise appear to this office, that the commission’s rules permit disclosure of the information at issue in this instance. We therefore conclude that investigative files 03-0441 and 03-0732 are excepted from disclosure in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law.

We now turn to investigative file number 03-0057. Section 552.101 of the Government Code also incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the

public when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

You ask whether you may withhold the identities of the victims and witnesses and their statements in the submitted investigations under common-law privacy in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-- El Paso 1992, writ denied). In *Ellen* the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigative file 03-0057 involves staff sexual misconduct with a juvenile inmate, not sexual harassment. We decline to apply *Ellen* to investigations of sexual misconduct with a juvenile inmate. However, the type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on our review of the investigative file at issue, we agree that you must withhold the names and identifying information of juvenile offenders that you have highlighted, as well as the additional identifying information we have marked, under section 552.101 and the doctrine of common-law privacy. *Cf.* Fam. Code § 58.007. The remainder of the information must be released.

To summarize, we conclude that: (1) the commission must withhold investigative files 03-0441 and 03-0732 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the commission must withhold the names and identifying information of juvenile offenders in investigative file 03-0057 that you have highlighted, as well as the additional information we have marked, under section 552.101 and the doctrine of common-law privacy. The remaining information in investigative file 03-0057 must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

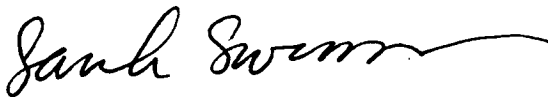
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 180049

Enc. Submitted documents

c: Mr. Alfred McAfee
Juvenile Correctional Officer
West Texas State School
P. O. Box 415
Pyote, Texas 79777
(w/o enclosures)